



*United States Attorney  
Southern District of New York*

FOR IMMEDIATE RELEASE  
June 23, 2004

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**U.S. ANNOUNCES ARRESTS IN CASE INVOLVING SCHEME TO STEAL  
AOL CUSTOMER LIST AND SELL IT TO SPAMMERS**

DAVID N. KELLEY, the United States Attorney for the Southern District of New York, announced that JASON SMATHERS, a software engineer employed at America On Line ("AOL"), and SEAN DUNAWAY were arrested this morning at their residences in Harpers Ferry, West Virginia, and Las Vegas, Nevada, respectively, on conspiracy charges filed in Manhattan federal court, arising from their scheme to steal AOL's entire subscriber list, and to use the list to send massive amounts of unsolicited commercial e-mails -- also known as "SPAM" -- to millions of AOL's customers. According to Mr. KELLEY, this case is one of the first in the nation prosecuted under the recently-enacted CAN-SPAM law.

As charged in the criminal Complaint, in May 2003, SMATHERS, using his skills as a computer engineer and his inside knowledge of AOL's computer system, misappropriated a list of 92 million AOL customer account "screen names." The Complaint further alleges that in May 2003, DUNAWAY purchased the list from SMATHERS and then sold the list to other SPAMmers for \$52,000, and also used the list to promote his own internet gambling

operation. The Complaint further charges that DUNAWAY later paid SMATHERS \$100,000 for an updated version of AOL's customer list, which DUNAWAY also sold.

According to the Complaint, AOL, one of the world's leading internet service providers, with a customer base of approximately 30 million subscribers, maintained its customer list in a database referred to as the "Data Warehouse," in a secure computerized location in Dulles, Virginia. As described in the Complaint, access to that database was limited by AOL to a small number of AOL employees. According to the Complaint, SMATHERS worked in AOL's Dulles offices, but was not authorized to access or copy the customer information in the Data Warehouse in April and May 2003, when he stole the list. However, as alleged, in April and May 2003, SMATHERS, using the computerized employee identification code of another AOL employee, improperly gained access to the Data Warehouse database, and began assembling a complete list of AOL's customer account screen names and related zip codes, credit card types (but no credit card numbers), and telephone numbers of AOL customers. The Complaint notes that there is no evidence that anyone gained access to or stole customers' credit card account numbers -- which AOL stores in a separate, highly secured data location apart from the Data Warehouse.

A search of SMATHERS's work computer conducted in May

2004, as alleged in the Complaint, revealed that in approximately April 2003, SMATHERS and another individual discussed various techniques by which to SPAM AOL customers, as well as the large profits that could be made from SPAMming.

The Complaint charges that, in or about May or June 2003, SEAN DUNAWAY (who is not an employee of AOL) told a confidential source (the "Source") that he (DUNAWAY) had obtained from an AOL insider a computerized list of 92 million AOL screen names for millions of AOL customers. The Source purchased the list (together with another individual), and paid DUNAWAY \$2,000 per letter of the alphabet (i.e., all the AOL screen names beginning with that letter), or \$52,000 total, for the entire customer list. In or around March 2004, the Source obtained a second list, from DUNAWAY which DUNAWAY described as an updated version of the original list, for \$32,000, which contains fewer screen names than the earlier list (approximately 18 million). According to the Complaint, the Source used both lists to send SPAM to AOL's customers in 2004 (i.e., after January 1, 2004, when the CAN-SPAM law went into effect), for purposes of marketing herbal penile enlargement pills.

SMATHERS, 24, resides in West Virginia. DUNAWAY, 21, resides in Las Vegas, Nevada. SMATHERS made his initial appearance in federal court in Virginia today, and DUNAWAY will make his first appearance in federal court in Las Vegas, Nevada

today. SMATHERS will be detained overnight until a detention hearing tomorrow.

Mr. KELLEY praised the outstanding efforts of the United States Secret Service, New York Electronic Crimes Task Force, Washington, D.C., Electronic Crimes Task Force, and Las Vegas Electronic Crimes Task Force. Mr. KELLEY also thanked AOL for its assistance and cooperation in this investigation.

SMATHERS and DUNAWAY each face a maximum sentence of 5 years in prison and a fine of \$250,000 or twice the gross gain or gross loss from the offense.

Assistant United States Attorney DAVID SIEGAL is in charge of the prosecution.

The charges contained in the Complaint are merely accusations, and the defendants are presumed innocent unless and until proven guilty.

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